IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1038 103

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE, CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER and FRANCISCO MARTINEZ,

Petitioners,

against

UNITED FRUIT COMPANY,

Respondent.

BRIEF OF RESPONDENT UNITED FRUIT COMPANY IN OPPOSITION TO PETITION FOR CERTIORARI

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INDEX

CASES CITED

STATUTES

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Question Involved

The sole question presented by the petition is whether under Sec. 594, Title 46 U. S. C. the libellants should have been allowed to recover one month's maintenance in addition to "one month's wages" (R. p. 36).

POINT I

The courts below correctly held that the statute meant one month's wages as set forth in the articles exclusive of maintenance or subsistence.

A. The term "wages" as used in Sec. 594 and in related sections of the Seamen's Act clearly excludes maintenance or subsistence.

In 1872, when Sec. 594 was originally enacted (Act of June 7, 1872, Chapter 322, Sec. 21), the term "wages" had

a plain and well settled meaning, i.e., the amount of money payable to a crew member periodically as specified in the articles, without inclusion or reference to any maintenance or subsistence which the shipowner was obligated to supply.

Indeed, for hundreds of years "wages" had been so understood in admiralty law. Continuously from the time of the Laws of Oleron and the Laws of Wisby* down to the present time seamen's wages and subsistence have been recognized as separate and distinct, and mutually exclusive.

The authorities antedating the Act of June 7, 1872 consistently recognized that whether the seamen's claim was for recovery of wages, maintenance and cure, or wages to the prosperous conclusion of the voyage, or wages to the end of the voyage plus damages for repatriation expense, loss of personal effects and subsistence, that "wages" meant money compensation for services rendered as a distinct unit of damages. Without exception such authorities fail to support in any way petitioners' contention that the meaning of "wages" in general maritime law is any broader than above indicated, or as popularly understood when the statute was enacted.

The following cases are typical instances of Court adherence to the distinction between "wages" and other elements of damage such as subsistence or travelling expenses: *The Rovena,* 20 Fed. Cas. p. 1272; *Hunt* v. *Colburn, et al.,* 12 Fed. Cas. pp. 905-6; *Hutchinson* v. *Coombs,* 12 Fed. Cas. p. 1083; *Orne* v. *Townsend,* 18 Fed. Cas. p. 825; *Jehner et al.* v. *Philadelphia & R.R. Co.,* 13 Fed. Cas. p. 436.

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* Article 18 clearly indicates that wages included money compensation only, whereas Article 19 distinguished between wages and subsistence (30 Fed. Cas. p. 1189).

Compare *The Hibernia,* 12 Fed. Cas. p. 112, and *Bates* v. *Seabury, et al.,* 2 Fed. Cas. p. 1025, which show that in computing a seaman's lay or agreed share of net profits of the voyage, in lieu of wages, no account could be taken of subsistence. The interesting feature of this comparison is that such cases do not indicate a different rule of damages than where wages are determined on a fixed salary basis.

Silent but persuasive testimony that subsistence is not included in "wages" are many decisions in which decrees for cash "wages" were allowed to seamen without the slightest mention or consideration of subsistence. *The America,* 1 Fed. Cas., p. 605; *Johnson et al.* v. *The Coriolanus,* 13 Fed. Cas., p. 737; *The Ocean Spray,* 18 Fed. Cas., p. 558; *Farrell et al.* v. *French,* 8 Fed. Cas., p. 1081 (S. D. N. Y.); *Hayes* v. *The J. L. Wickwire,* 11 Fed. Cas., p. 909; *The Dolphin,* 7 Fed. Cas., p. 861; *The Mary Belle Roberts,* 16 Fed. Cas., p. 960; *Sheffield* v. *Page,* 21 Fed. Cas., p. 1228; *Veacock* v. *McCall,* 28 Fed. Cas., p. 1118; *The Wanderer,* 20 Fed. 655; *The Heroe,* 21 Fed. 525; *Dary* v. *The Caroline Miller,* 36 Fed. 507; *Waitshoair et al.* v. *The Craigend,* 42 Fed. 175; *The Ida McKay,* 99 Fed. 1002; *The Emma F. Angell,* 217 Fed. 311.

The term "wages" also appears in several related sections of the Seamen's Act (Tit. 46 U. S. C., Chap. 18, Secs. 541-713), reference to which shows conclusively that the meaning of the term is confined to "wages" in the ordinary sense, payable in money as specified in the articles, exclusive of everything else.

Sec. 713 of the Act sets forth the statutory form of articles of agreement between shipowner and crew wherein

> "in consideration of which service, to be duly performed, the said master hereby agrees to pay the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the annexed scale."

As conceded in the Petition, page 10, the articles in this case followed said statutory form.

As quoted above, Sec. 713 contemplates and in fact requires payment *"as wages"* of the *"sums against their names respectively expressed"*, *"and"* in addition (not including but excluding the same from such "wages") requires the owner to supply the crew "with provisions according to the annexed scale",—thus making it perfectly clear that as used in the Act "wages" must be given the common and ordinary meaning firmly attached thereto in admiralty law.

Sec. 591 of the Act specifies the time when a seamen's right "to wages *and* provisions" shall be taken to commence. Here again "wages" is distinguished by the conjunctive "and" from the "provisions" required to be supplied. The significance of the phrase "wages and provisions" (not "wages including provisions") was recognized in the decision of the Circuit Court (L. Hand, C. J.) affirming the District Court on this point:

> "As to the claim for maintenance, while, it is true the statute is not punitive and should be construed liberally, we see no reason to add to it what does not appear on its face. In § 591 Congress used the phrase: 'A seamen's right to wages and provisions', while elsewhere in the sections dealing with 'Wages of Seamen' —§§ 591-605—it spoke only of 'wages'. This opposition seems to us not to be without significance. Moreover, the same distinction is carried forward into § 665 regarding 'provisions'" (R. p. 38).

In Sec. 597 the Act makes provision for payment to a seaman on demand upon arrival in port "one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made". The balance of "wages" earned and remaining "unpaid" can only refer to the sums against the seaman's name in the articles "as wages" (Sec. 713). The phrase "remaining unpaid" is wholly inapt with relation to provisions supplied during the voyage.

Cases involving Sec. 597 show very clearly that the "wages" referred to therein have reference only to the sums specified as wages in the articles, without taking any account of provisions or subsistence. See for example, *The London*, 241 Fed. 863 (C. C. A. 3), cert. den. 245 U. S. 652.

It is inconceivable that without express statutory definition to the contrary the term "wages" in Sec. 594 was intended to have a different meaning from that to be accorded to the same term in the other sections of the Act above mentioned. The District Court and Circuit Court of Appeals were clearly correct (assuming discharge of the petitioners was improper) in awarding the petitioners by way of liquidated damages only the "one month's wages" required to be paid pursuant to Sec. 594, i.e., the respective sums set opposite their names "as wages" in the ship's articles.

There is not a word in Sec. 594 suggesting that the "one month's wages" should be given an enlarged or special meaning. As the Court said in *Bockes* v. *Wemple*, 115 N. Y. 302:

> "The intent of the legislature is to be sought, primarily, in the words used and, if they are free from ambiguity, there is no occasion to search elsewhere for their meaning. As it was said in McClusky v.

> Cromwell (11 N. Y. 593), 'It is not allowable to interpret what has no need of interpretation; and when the words have a precise and definite meaning to go in search of conjecture, in order to restrict or extend the meaning. The natural and obvious meaning should be taken without resorting to subtle and forced construction'" (p. 308).

This is particularly true since the word "wages" had, as heretofore stated, a "judicially settled meaning" and must be presumed to have been used in that sense by Congress. *United States* v. *Merriam,* 263 U. S. 179, 187; *Kepner* v. *United States,* 195 U. S. 100, 124; *The Abbotsford,* 98 U. S. 440, 444; *Berwind-White Coal Mining Co.* v. *Rothensies,* 137 F. (2d) 60, 62 (C. C. A. 3).

In *The Steel Trader,* 275 U. S. 388, the Court below allowed a seaman, by way of damages for improper discharge under Sec. 594, wages to the end of the voyage but did not include subsistence in the amount allowed as damages although subsistence was expressly demanded. The Circuit Court affirmed. This Court held recovery should have been limited to "one month's wages" but expressed no disagreement with the exclusion of subsistence. The issue as to the propriety of including subsistence having been clearly raised, the fact that this Court did not disagree with the exclusion of subsistence from the one month's wages allowed cannot be considered inadvertent, particularly since this Court undertook (p. 389) to properly interpret and construe Sec. 594.

Petitioners refer to a number of modern statutes said to be *in pari materia* with Sec. 594. These statutes, which contain special definitions of "wages" extending the ordinary meaning of the term, are entirely irrelevant since the enlarged meaning of "wages" as used therein depends entirely upon the special statutory definition. Such statutes cannot be said to be *in pari materia* with Sec. 594, which

was enacted at a time when "wages" had a well settled meaning in maritime matters relating to seamen, and did not in any way purport to broaden such meaning.

POINT II

The opinion of the Circuit Court of Appeals (R. p. 36) is not in apparent conflict with the decision of the Fourth Circuit in *Lakos* v. *Saliaris*.

The question in *Lakos* v. *Saliaris*, 116 F. (2d) 440, was whether a war bonus should be taken into account in computing one-half the balance of a seaman's wages due upon arrival in port under Sec. 597, above mentioned. The Court's inclusion of the war bonus is in harmony with the long-standing rule that bonuses constitute part of seamen's wages. *The Frank C. Barker*, 19 Fed. 332. Accordingly, there is no apparent conflict between the *Lakos* v. *Saliaris* decision and the Circuit Court of Appeals' decision in this case.

POINT III

The petition should be denied.

In event of the petition being granted, which we oppose, we believe that review should also be had, on the record already filed for petitioners, of that part of the decision granting libellants one month's wages.

Respectfully submitted,

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Dated: New York, July 14, 1944.